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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

LEXINGTON NATIONAL INSURANCE  
COMPANY,

Defendant and Appellant.

B207458

(Los Angeles County  
Super. Ct. No. SJ003117)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Martin L. Herscovitz, Judge. Affirmed.

Nunez & Bernstein and E. Alan Nunez for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Lexington National Insurance Company (appellant) appeals from the judgment entered after the superior court denied its motion to vacate the forfeiture of a bail bond which it had issued. We affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Fabian Villicana was arrested in May 2006 and bail was set in the amount of \$150,000. On May 17, 2006, appellant posted a surety bond in the amount of \$150,000 for Villicana, number ZZ003118. The bail agent was Creative Bail Bonds (Creative). Villicana was due to appear in court in case number LA050908 (the criminal case) on January 29, 2007, but he failed to appear. The court ordered the bail bond forfeited and issued a warrant for Villicana's arrest. The clerk of the superior court mailed a notice of forfeiture on January 30, 2007.

Pursuant to Penal Code section 1305,<sup>1</sup> a surety may be released of all obligations under the bond if certain conditions are met. Subdivision (g) of section 1305 provides that: "In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond. . . ."

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<sup>1</sup> All further statutory references are to the Penal Code.

Appellant timely filed its first motion to vacate forfeiture of the bond on August 3, 2007.<sup>2</sup> The motion carried the caption of the criminal case, with appellant as the moving party/real party in interest. Appellant submitted the August 2, 2007 declaration of Alexander Hong, a Creative employee, who stated that he had located Villicana in Mexico. Hong declared that he had brought Villicana to the local police station, where Villicana was photographed and fingerprinted. Hong described the process by which he contacted Diana Carbajal, a representative of the district attorney's extradition unit, verified that the person he detained in Mexico was Villicana, and presented that verification to Carbajal. Carbajal told Hong that she would review the paperwork he had provided and contact Creative's attorney.

In its moving papers, appellant stated, "To date, the District Attorney's Office has not indicated its decision as to whether or not extradition will be pursued in this case. [Counsel can make such representation (or any updates) to the court at the hearing on this motion.]"

At the hearing on August 23, 2007, the court extended the forfeiture period until February 19, 2008. Accordingly, appellant filed a second motion to vacate on February 19. The motion did not include an updated declaration by Hong.

At the March 18, 2008 hearing, the trial court denied appellant's motion to vacate the forfeiture and entered judgment for the County of Los Angeles. Appellant filed a timely notice of appeal, but chose to proceed without the reporter's transcript of the hearing. It has not moved to augment the record. No respondent's brief was filed.

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<sup>2</sup> The 180-day period after mailing of the notice of forfeiture was July 29, 2007. Adding five days for mailing (Pen. Code, § 1305, subd. (b)(1); Code Civ. Proc., § 1013/1013a), the period ended on August 3, 2007.

## DISCUSSION

Appellant contends that because it did all that it was required to do under section 1305, subdivision (g) to locate Villicana, the trial court erred in failing to exonerate the bond. Appellant claims it should not be penalized for the prosecutor's inaction in failing to extradite Villicana, and that in the alternative, the 180-day period should have been tolled under equitable principles.

Although appellant challenges the trial court's refusal to vacate the forfeiture and exonerate the bond, we do not have an adequate record to evaluate the merits of appellant's claim. As we have noted, the record on appeal does not include a transcript of the March 18, 2008 hearing during which the court made its ruling. We have only a minute order stating that the "[m]otion to vacate forfeiture and exonerate bail is argued and respectfully denied." The minute order does not include the basis of the trial court's ruling. Thus, we have no way of determining whether the court erred.

"It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record. [Citations.] Because [appellant] has failed to provide such a record, we have no occasion to consider further the merits of [its appeal]." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.)

## DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.